

### **CONTRACT FOR LEGAL SERVICES**

This CONTRACT FOR LEGAL SERVICES (the "Contract") is entered into and is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between CITY OFFLAGSTAFF, an Arizona municipal corporation (the "City"), and the law firm of HOLM WRIGHT HYDE & HAYS PLC ("Counsel").

WHEREAS, City is authorized to use agreements approved by other Arizona municipalities if such agreements allow for cooperative use; and

WHEREAS, the City of Tempe issued RFP No. 12-096 titled "Legal Representation for Statewide Efforts to Collect Unpaid Taxes;" and

WHEREAS, City of Tempe awarded a contract, T12-096-01, to Counsel, comprised of the RFP and Counsel's response; and

WHEREAS, Contract No. T12-096-01 provides for cooperative use by other cities; and

WHEREAS, the City of Tempe Contract No. T12-096-01, attached hereto as Exhibit A, is adopted as part of this Contract.

### **AGREEMENT**

In consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Counsel hereby agree as follows:

1. **Scope of Services.** Counsel agrees to represent City and provide legal counsel in all matters related to the City's attempts to collect unpaid privilege taxes from identified on-line travel companies (see RFP pg. 26) for the reviewed joint audit period (various, beginning 4/1/2000 through 6/30/2009).

Counsel agrees to perform legal services specified this Contract and as identified and described in this Contract as they relate to the previously identified joint audit period and companies. To the extent Counsel wishes to include additional on-line travel companies (OTC's) not already subject to audit and/or to include additional periods not contained in the joint audit period, Counsel shall not do so without the express written consent of the City Attorney.

2. **Term of Contract.** Unless terminated as provided below, the term of this Contract shall expire upon the conclusion of any litigation or other proceedings as set forth in this Contract, as related to the original OTC's joint audit period.
3. **Authorized Expenditures for Legal Services and Expenses.** City agrees to pay Counsel for services rendered in accordance with the proposed fee arrangement set forth in Section Four of the RFP Response as modified by Contract No. T12-096-01.

4. **Lead Attorney.** Counsel shall serve as Lead Attorney to City. However, Counsel may utilize the services of other attorneys or law firms as set forth in RFP No. 12-096 provided that the overall fees to the City are not changed.
5. **Subcontracting/ Assignment; Experts.** Except as set forth in Section 4 above, services covered by this Contract shall not be assigned or subcontracted, in whole or in part, without the prior written notice and consent of the City Attorney. Technical experts shall not be retained by Counsel without the prior written consent of the City Attorney. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with Counsel.
6. **Insurance.** Counsel shall carry commercial general liability, vehicle liability, professional liability, and worker's compensation insurance in such amounts as are standard in the industry and provide proof of same to City upon request of the City Attorney.
7. **Independent Contractor.** The services provided by Counsel under this Contract are those of an independent contractor, not an employee.
8. **Termination Under A.R.S. § 38-511.** Per A.R.S. § 38-511, City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or creating the Contract on behalf of City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party of the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of this Contract. The cancellation shall be effective when written notice from City is received by all other parties to Contract, unless the notice specifies a later time.
9. **Common Interests and Conflicts of Interest.** City acknowledges that Counsel is jointly representing City and other municipalities on the matters contemplated by this Contract. To achieve economies of scale and to maximize the effectiveness of City in any adjudication, City authorizes Counsel to seek strategies and positions in such adjudication that advance the common interests of all retained municipalities. However, City also recognizes that from time to time issues may arise in the adjudication in which City and other municipalities may have diverse, incompatible or conflicting interests.

Counsel will fully and timely inform and explain to City the factual and legal basis for each conflict of interest among participating municipalities which Counsel perceives as a result of the performance of its duties under this Contract respecting issues raised in adjudication; and

City will disclose to Counsel perceived or known conflicts of interest among the participating municipalities respecting issues raised in the adjudication.

In the event the participating municipalities, with Counsel's assistance, are unable to resolve a conflict of interest among them, such conflicts shall be dealt with in

accordance with the Arizona Supreme Court's Rules of Professional Conduct; provided, however, this Contract shall be construed to confer upon City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the municipalities in situations where the rules would require Counsel to cease representing City.

Counsel will notify City if one of the participating municipalities has withdrawn from the joint representation contemplated herein.

10. **Compliance with Federal and State Laws.** Counsel understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. In addition, Counsel understands and acknowledges the applicability of A.R.S. §34-301 and 34-302.

11. **Equal Employment Opportunity.** Counsel will comply with Executive Order No. 11245, entitled "Equal Employment Opportunity", as amended by Executive Order No. 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Counsel will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

12. **Immigration Law Compliance.**

Under the provisions of A.R.S. §41-4401, Counsel warrants to the City that Counsel and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that Counsel and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by Counsel or any of its subcontractors will be considered a material breach of this Contract and may subject Counsel or Subcontractor to penalties up to and including termination of this Contract or any subcontract. Counsel will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. Counsel's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The City retains the legal right to inspect the papers of any employee of Counsel or any subcontractor who works on this Contract to ensure that Counsel or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of Counsel and any of its subcontractors to ensure compliance with this warranty.

Counsel agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

13. **Termination for Convenience.** City reserves the right to terminate this contract or any part of this Contract for its sole convenience with 30 days written notice. In the event of any termination, Counsel must immediately stop all work, and must immediately cause any of its Subcontractors to cease all work. Counsel will not be paid for any work done upon receipt of the notice of termination, nor for any costs incurred by Counsel's Subcontractors, which Counsel could reasonably have avoided.
14. **Cancellation for Cause.** City may also cancel this contract or any part of this Contract with 7 days notice for cause in the event of any default by Counsel, or if Counsel fails to comply with any of the terms and conditions of this contract. Unsatisfactory performance as judged by the City Attorney, and failure to provide City, upon request, with adequate assurances of future performance will all be causes allowing City to cancel this contract for cause. In the event of cancellation for cause, City will not be liable to Counsel for any amount, and Counsel will be liable to City for any and all damages sustained by reason of the default which gave rise to the termination.

In the event Counsel is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this contract immediately upon giving notice to the Counsel.

If the City cancels this Contract or any part of the Contract services, the City will notify Counsel in writing, and upon receiving notice, Counsel must discontinue advancing the work and proceed to close all operations.

Upon cancellation, Counsel must deliver to City all drawings, special provisions, reports, and other documents, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by City. Use of incomplete data will be at City's sole responsibility.

Counsel must appraise the work it has completed and submit its appraisal to the City for evaluation. At that time, Counsel will be entitled to be paid for Work performed and accepted by the City before the default.

If Counsel fails to fulfill in a timely and proper manner its obligations, or if Counsel violates any of the terms of this Contract, the City may withhold any payments to Counsel for the purpose of setoff until the exact amount of damages due the City from Counsel is determined by a court of competent jurisdiction.

If the City improperly cancels the Contract for cause; the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of this Section.

15. **Non-appropriation of funds.** If the City Council does not appropriate funds to continue this Contract, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice of termination to Counsel at least 30 days before the end of its current fiscal period and will pay to Counsel all approved charges incurred through the end of this period.
16. **Contract Modification.** Any amendment, modification or variation from the terms of this Contract must be in writing and will be effective only after approval of all parties signing the original Contract.
17. **Attorney's Fees.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default, the prevailing party will be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not such action is prosecuted to judgment.
18. **Force Majeure.** Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts include, but are not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.
19. **Taxes.** Counsel is solely responsible for any and all tax obligations which may result out of Counsel's performance of this contract. The City has no obligation to pay any amounts for taxes, of any type, incurred by Counsel.
20. **Advertising.** No advertising or publicity concerning the City using Counsel's services shall be undertaken without first obtaining the written approval for the advertising or publicity by the City Attorney.
21. **Third Party Beneficiary.** Except as recognized in Section 9, nothing under the Contract will be construed to give any rights or benefits in the Contract to anyone other than the City and Counsel, and all duties and responsibilities undertaken in accordance with the Contract will be for the sole and exclusive benefit of the City and Counsel and not for the benefit of any other party.
22. **Severability.** If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered deleted.
23. **Authority.** Each party warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each

party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

24. **Prohibited Activities.** Counsel, and on behalf of any subcontractors, certifies, to the extent applicable under A.R.S. §§ 35-391 et seq. and 35-393 et seq., that neither has “scrutinized” business operations, as defined in the above statutes, in Sudan or Iran.

**HOLM WRIGHT HYDE & HAYS PLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF FLAGSTAFF,  
a municipal corporation**

\_\_\_\_\_  
Jerry Nabours, Mayor

ATTEST:

\_\_\_\_\_  
Elizabeth Burke, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle D’Andrea, Interim City Attorney

Attachment: Exhibit A

City of Tempe Contract Award Notice

City of Tempe Staff Summary Report

RFP#12-096 Notice

RFP#12-096 Standard Terms & Conditions

RFP#12-09 Special Terms and Conditions

RFP#12-096 Scope of Work

Holm Wright Hyde & Hays PLC Proposal:

1. Letter dated March 8, 2012
2. Offer Form and Proposal (White Papers re. Tempe, Phoenix and Tucson taxes omitted)
3. Additional Copies Statement
3. Proposal Questionnaire
4. Fee and Costs Information